SUPREME COURT OF FLORIDA
CASE NO. SC02-1624

KATHERINE HARRIS, in her capacity as
Secretary of State and as head of the
Department of State, and STATE OF FLORIDA,
DEPARTMENT OF STATE,
Petitioners,

-vs-

COALITION TO REDUCE CLASS SIZE,
and PRE-K COMMITTEE (Parents For
Readiness Education For Our Kids) (PAC),
Respondents.

ON DISCRETIONARY REVIEW FROM THE SECOND JUDICIAL CIRCUIT
Lower Tribunal Case Nos. 02-CA-1490; 1D02-2939

AMICUS CURIAE BRIEF OF THE FLORIDA HOUSE OF REPRESENTATIVES

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STATEMENT OF INTEREST

This *amicus curiae* brief is submitted on behalf of the Florida House of Representatives. The Florida Senate, although not appearing as an *amicus curiae*, concurs with the position set forth in this brief by the Florida House of Representatives.

This case involves the constitutionality of chapter 2002-390, Laws of Florida, which requires the placement of a "fiscal-impact statement" on any proposed revision or amendment to the Florida Constitution placed on the ballot after May 24, 2002. The Florida House of Representatives and Florida Senate ("Florida Legislature" or "Legislature") passed chapter 2002-390. Based upon concerns regarding the constitutionality of chapter 2002-390, the trial court enjoined Petitioners from placing any fiscal-impact statement on the ballot for any initiative approved for the general election ballot of November 2002.

Pursuant to Article VI, Section 1 of the Florida Constitution, the Legislature is charged with the obligation of regulating elections and ensuring ballot integrity. As stated by the First District Court of Appeal,

> If allowed to stand, the trial court's order will thwart the legislature's intent to inform the electorate of the fiscal impact of revisions or

> amendments to the state constitution proposed by initiative. The result will, at least arguably, be a less informed electorate.[1]

The Florida Legislature has a strong interest in the issues presented in this case. The constitutionality of chapter 2002-390 is an issue of substantial importance to the integrity of Florida's Constitution and the validity of Florida's election process. The Florida Legislature is vitally interested in ensuring that Florida citizens are afforded the opportunity to cast informed and knowing votes with regard to proposed amendments to their constitution.

SUMMARY OF THE ARGUMENT

Amendment to the Florida Constitution is an eminently important process that should be afforded the greatest certainty, care and deliberation. The voters' right to accept or reject a proposed amendment to their constitution based upon informed and knowing reflection is of paramount importance. When a proposed amendment will have a determinable fiscal impact on the state, it is for the voters to decide whether the advantages outweigh the disadvantages. Chapter 2002-390, Laws of Florida,[2] was enacted to ensure the integrity of this eminently important process, and was done in a way that is consistent with both state and federal constitutional principles.

The Legislature, in discharging its constitutional duty with respect to the election process, has passed legislation designed to help the voters understand proposed amendments and ensure ballot integrity. Since 1968, the Legislature has enacted at least four statutes that regulate this process and codify the mandates of Article XI of the Florida Constitution. The constitutionality of the Legislature's obligation and responsibility to enact these statutes has not been challenged.

At issue in this case is another example of the Legislature's fulfillment of its obligation to regulate the election process and ensure ballot integrity. Through

Chapter 2002-390, the Legislature has passed a requirement that an amendment must contain a statement setting forth the fiscal impact that the amendment will have if passed. The inclusion of a fiscal-impact statement will give voters more insight into the amendment and will enable them to cast a more informed and knowing vote.

Nothing in this legislation inhibits or limits the actions of those who seek to propose a constitutional amendment or revision. This legislation does not impose any additional burden or constraint on the sponsors of proposed amendments. Moreover, the Legislature did not limit the fiscal-impact statement simply to citizen initiatives. Indeed, it is applicable to *all* amendments certified after the law's effective date. In passing this amendment, Florida joined 11 other states around the country that have enacted statutes requiring their voters to be informed of the fiscal impact of a proposed amendment to a state constitution or legislation.

Moreover, the Legislature made Chapter 2002-390 applicable to *all* proposed amendments that have not been certified as of the legislation's effective date – May 24, 2002. If the goal of having an informed voter is a good one (and one cannot reasonably argue to the contrary), then the voters need to have this information as soon as possible for as many amendments as are eligible to be included under the new

legislation.

Respondents, Coalition to Reduce Class Size and Pre-K Committee (Parents for Readiness Education For Our Kids) (PAC) ("Sponsors"), challenge the Application of chapter 2002-390 to their proposed amendments. However, an analysis of the legislation and the interests at issue demonstrates that chapter 2002-390 ensures the integrity of the important process of amending the Florida Constitution, and was enacted and implemented in a way that is consistent with both state and federal constitutional principles. Accordingly, Chapter 2002-390 should be found constitutional, and the trial court's order enjoining the Petitioners from placing a fiscal-impact statement on the ballot in the 2002 election should be vacated.

ARGUMENT

"Nothing in the government of this state or nation is more important than amending our state and federal constitutions."[3] This importance is twofold for Florida citizens.

First, the Florida Constitution represents the supreme law of Florida, the organic law of our state. The sanctity of Florida's Constitution was recently observed by Justice Pariente:

> The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values.[1]

In sum, the Florida Constitution is the basic legal framework of the state, the instrument that ensures the rights of each Florida citizen.

Second, the right of Floridians to decide whether to accept or reject a change to their Constitution is paramount, a right that is protected by the Constitution itself.[2]

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[1] *Advisory Opinion to the Attorney General re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy,* 815 So.2d 597, 600 (Fla. 2002) (Pariente, J., concurring) (quoting *Advisory Opinion to the Attorney General – Limited Marine Net Fishing*, 620 So.2d 997, 999 –1000 (Fla. 1993) (McDonald, J., concurring)).
[2] Art. XI, § 5, Fla. Const.

This right epitomizes the distinction between governance in the United States from that in other lands – the sovereignty of the people.

The sanctity of our federal Constitution, as well as the citizens' right to cast an informed decision on its composition, was recognized by our founding fathers over two centuries ago. In 1787 Alexander Hamilton wrote:

> [Y]ou are called upon to deliberate on a new Constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences nothing less than the existence of the Union the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, whether societies of men are really capable or not of establishing good government from *reflection and choice,* or whether they are forever destined to depend for their political constitutions on *accident and force.* If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.[3]

Today, the United States Supreme Court continues to recognize the importance of our constitutional process, and has opined that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order . . .

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[3] The Federalist No. I, *The Federalist Papers,* ed. C. Rossiter (New York, 1987), p. 87 (emphasis supplied).

is to accompany the democratic process."[4] Likewise, the Florida Constitution recognizes this importance and provides in Article VI, Section 1 that elections shall be regulated by law. Indeed, the permanency and supremacy of Florida's Constitution require the courts and legislature to be vigilant in guarding the sanctity of this instrument by ensuring the ballot integrity of any proposed amendment. This obligation originates from the Constitution itself, and has been repeatedly recognized in this Court's prior decisions:

> The requirement for proposed constitutional amendment ballots is the same as for all ballots, i.e., that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote . . . . All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide . . . . *What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.*[5]

In 1968 the voters of Florida approved Article XI, Section 3, which enables sponsors to place on the ballot an amendment to the Florida Constitution if they are able to gather a certain percentage of signatures from Florida citizens. There are no

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[4] *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 183, 119 S.Ct. 636, 637 (1999).

[5] *Askew v. Firestone,* 421 So.2d at 155 (quoting *Hill v. Milander*, 72 So.2d 796, 798 (Fla. 1954) (emphasis in original)).

subject matter restrictions on this process, nor does Article XI, Section 3 afford the same opportunity for public hearing and debate that accompanies the processes for amending the Constitution provided in Article XI, Sections 1, 2 and 4.

Indeed, Florida citizens "have a right to change, abrogate or modify [their Constitution] in any manner they see fit so long as they keep within the confines of the Federal Constitution."[6] However, ballot integrity requires that the ballot give the voters fair notice of the question they must decide so that they may intelligently cast their vote.[7] When voting on changes to the "basic legal framework of this state,"[8] voters have a right to know the whole truth. When a proposed amendment carries *a price tag that the citizens will be required to pay*, it is the citizens' right to know the cost before they cast their vote. The citizens' right to amend their constitution is strengthened, not weakened, by disclosure of the fiscal impact of an amendment *prior* to their vote.

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[6] *Armstrong v. Harris*, 773 So.2d 7, 14 (Fla. 2000), (quoting *Gray v. Golden*, 89 So.2d 785, 790 (Fla. 1956)), *cert. denied*, 532 U.S. 958, 121 S.Ct. 1487 (2001).

[7] *Advisory Opinion to the Attorney General Regarding Right to Treatment and Rehabilitation*, 818 So.2d 491, 498 (Fla. 2002).

[8] *Armstrong*, 773 So.2d at 23 (Harding, J., concurring) (stating that "clarity and accuracy is especially important when voters are being asked to change the basic legal framework of the state").

The fiscal-impact statement requirement of chapter 2002-390 aids the intelligent exercise of the privilege of voting. It provides the citizens of this state with the ability to cast their vote based upon *reflection and choice,* rather than upon *accident and force.* As it did over 200 hundred years ago, *this right of the people* speaks its own importance.

I. THE FLORIDA LEGISLATURE HAS A DUTY TO ENSURE A VALID ELECTION PROCESS, AND IT ENACTED CHAPTER 2002-390 AS PART OF THIS DUTY.

Because the initiative petition process is of paramount importance, this Court has recognized that the integrity of the process must be protected through reasonable regulations:

> Given its constitutional underpinnings, the right to petition is inherent and absolute. This does not mean, however, that such a right is not subject to reasonable regulation. Quite the contrary, reasonable regulations on the right to vote and on the petition process are necessary to ensure ballot integrity and a valid election process.[4]

Beyond its mandate that the power to propose a constitutional amendment by initiative is reserved to "the people," Article XI, Section 3 of the Florida Constitution contains few details regarding how the initiative process is to be conducted. It limits the amendment to a single subject (except for those amendments limiting the government's power to raise revenue), provides that the method for invoking the initiative process is to file a petition with the Secretary of State, and sets forth a formula for calculating the number of voters that must sign the petition.

There are two other constitutional sections bearing upon the initiative process. Article XI, Section 5 provides the deadline for filing an amendment proposal with the

Secretary of State in order to be voted upon in the next general election, imposes a requirement that the proposal be published twice at specific intervals preceding the election, and establishes a default effective date in the event no effective date is specified in the amendment. Article IV, Section 10 directs the Attorney General to request this Court's written opinion as to the validity of each initiative petition, and directs the Court to allow interested parties to be heard on the questions presented.

The Florida Constitution is silent on certain practical issues such as the form of the actual ballot that is submitted to the voters, and how or when the sponsor is to go about obtaining the required signatures. Thus the Florida Legislature, in carrying out its responsibility for regulating elections,[9] has implemented several statutes concerning the method and manner in which an initiative petition is placed upon the ballot.[10] The Legislature's authority to enact these statutes has not been challenged.

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[9] Art. VI, § 1, Fla. Const.

[10] *See* § 15.21, Fla. Stat. (2001) (requiring sponsor of initiative petition to register as a political committee, submit text, title, and "substance" to Secretary of State, and obtain letter from the Division of Elections confirming that ten percent of the required signatures have been verified); § 101.161 (requiring a ballot title as well as an "explanatory statement" of the ballot "substance" that is not more than 75 words, is clear and unambiguous, and is styled in a way that a "yes" vote indicates approval); *Id.* § 16.061 (requiring Attorney General, within 30 days of receipt of petition from the Secretary of State, to request advisory opinion from Florida Supreme Court regarding compliance with the single subject requirement of Art. XI, § 3 and the ballot

Indeed, enactment of these statutes is consistent with the principle that even a constitutional provision that is "self-executing" may be supplemented by legislation.[11]

Section 101.161, Florida Statutes, for example, specifies what is to be printed on the ballot. In recognition of the fact that the actual language of a constitutional amendment may be hard to understand and may not sufficiently communicate the purpose or effect of the proposed amendment, this section requires that the ballot contain a statement of no more than 75 words describing the "chief purpose of the measure."[12] This ballot summary must be styled in such a way that a "yes" vote indicates approval of the proposal, and a "no" vote indicates rejection of the proposal.[13] The sponsor must also prepare a title for each amendment of not more than 15 words, containing a caption "by which the measure is commonly referred to

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title and substance requirements of § 101.161); *Id.* § 100.371 (requires the sponsor to obtain advance approval from the Secretary of State regarding the petition form to be used, requires the supervisors of elections to verify the signatures and certify such verification, and requires the Secretary of State to certify the initiative's position on the ballot upon receipt of the certification from the supervisors).

[11] *Cf. Gray v. Bryant*, 125 So.2d 846, 851 (Fla. 1960) (fact that constitutional provision may be supplemented by legislation making right available or furthering right does not prevent the provision from being "self-executing").

[12] § 101.161(1), Fla. Stat. (2001).

[13] *Id.*

or spoken of."[14]

Although the statutory requirements regarding the ballot summary and title do not appear in the Florida Constitution, they have long been accepted as an appropriate exercise of the Legislature's obligation to inform voters of "the true meaning and ramifications of the amendment,"[15] and to provide "fair notice" of the content of the proposed amendment so that the voter "will not be misled" as to its purpose and can cast an "intelligent and informed ballot."[16] This Court recently explained that the accuracy requirement contained in Section 101.161 is implicitly grounded in Article XI, Section 5 of the Florida Constitution, and that this accuracy requirement serves as a kind of "truth in packaging" law for the ballot.[17] While voters have an obligation to educate themselves about the details of a proposal, "public information cannot be a substitute for an accurate and informative ballot summary."[18]

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[14] *Id.*

[15] *See, e.g., Advisory Opinion to the Attorney General re Term Limits Pledge*, 718 So.2d 798, 803 (Fla. 1998).

[16] *E.g., id.; Advisory Opinion to the Attorney General re Stop Early Release of Prisoners,* 661 So.2d 1204, 1206 (Fla. 1995).

[17] *Armstrong*, 773 So.2d at 13.

[18] *Smith v. American Airlines*, 606 So.2d 618, 621 (Fla. 1992) ("[t]he burden of informing the public should not fall only on the press and opponents of the measure—the ballot title and summary must do this") (citing *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982)).

Like the ballot summary, the fiscal-impact statement required by chapter 2002-390 is simply another means of helping the voter make an intelligent, informed decision regarding an amendment proposal. The fiscal-impact statement, together with the ballot summary, educate the voter regarding the ramifications of *all* proposed amendments prospectively certified to the Secretary of State—no matter how they are initiated[19]—by informing the voter of the associated benefits *and* costs. The fiscal-impact statement is an appropriate enhancement to Florida's "truth in packaging" law for the ballot, which enhancement is well within the Legislature's duty and authority to ensure the validity of the election process.

Unlike the ballot summary, chapter 2002-390 does not impose any duties or burdens upon the sponsor of an initiative petition. The steps that a sponsor must take to place a petition on the ballot remain unchanged. The sponsor's right to place an initiative petition on the ballot is wholly unaffected by chapter 2002-390; if the ballot title and summary satisfy the single subject requirement and the accuracy requirement of Section 101.161 and the sponsor obtains the requisite number of voter signatures, the proposed amendment will be placed on the ballot irrespective of the substance of

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[19] Ch. 2002-390, § 4, Laws of Florida (effective May 24, 2002).

the fiscal-impact statement.

Furthermore, chapter 2002-390 contains numerous protections which safeguard the constitutional initiative process. After the Revenue Estimating Conference (REC) has completed an analysis and prepared a fiscal-impact statement for the proposed initiative, the REC must allow those favoring and opposing the initiative to submit information for the REC's consideration.[20] The REC may also solicit information from other agencies.[21] If the REC members are unable to reach a consensus or majority concurrence, the ballot shall state that the fiscal impact of the proposed amendment "cannot be determined at this time."[22] If a court finds that the fiscal-impact statement is not "clear and unambiguous," the statement is to be remanded to the REC for redrafting within 15 days.[23] As with the ballot summary, this Court is the final arbiter of whether the fiscal-impact statement complies with the requirements of Section 101.161.[24]

Finally, chapter 2002-390 does not violate the First Amendment. It applies to

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[20] *Id.* §§ 2,3.
[21] *Id.* § 3.
[22] *Id.*
[23] *Id.*
[24] *Id.* § 2.

all proposals to amend the Florida Constitution, no matter what their source, and does not interfere with the speech by the initiative's sponsors. Thus, chapter 2002-390 is content-neutral.[25] Content-neutral regulations that address the mechanics of the initiative petition process, without hindering political speech, are subject to intermediate scrutiny.[26] The state of Florida has a legitimate and substantial interest in regulating the ballot initiative process and educating voters regarding the ramifications of their vote.[27]

The fiscal-impact statement is simply the latest improvement in a long

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[25] A content-neutral regulation makes no reference to the content of speech. In contrast, a content-based regulation is one which specifically prohibits public discussion of an entire category of speech. *See Boos v. Barry*, 485 U.S. 312, 319-20, 108 S.Ct. 1157, 1162-63 (1988).

[26] *See Biddulph v Mortham*, 89 F.3d 1491, 1497 (11th Cir. 1996) (noting the distinction recognized in *Meyer v. Grant*, 486 U.S. 414, 423-27, 108 S.Ct. 1886, 1892-95 (1988), between regulation of the circulation of petitions, which is "core political speech," and a state's general initiative regulations which do not implicate core political speech), *cert. denied*, 519 U.S. 1151, 117 S.Ct. 1086 (1997); *see also Delgado v. Smith*, 861 F.2d 1489, 1494 (11th Cir. 1988) (recognizing Florida's right to establish the mechanism of the initiative petitions and distinguishing that right from regulations that might burden speech or hinder the quantity of speech); *cert. denied*, 492 U.S. 918, 109 S.Ct. 3242 (1989).

[27] *See Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 204-05, 119 S.Ct. 636, 648-49 (1999). Even if strict scrutiny were to be applied, chapter 2002-390 has been narrowly tailored to meet the compelling state interest of protecting the electorate's right to cast an informed and knowing vote.

progression of reasonable regulations put in place by the Legislature as part of its duty to ensure a valid election process. Like the ballot summary, the fiscal-impact statement provides valuable information to give the voter "fair notice" of the purpose and effect of the proposed amendment. Also, like the ballot summary, the fiscal-impact statement will be reviewed by this Court to ensure that it is "clear and unambiguous." Unlike the ballot summary, the fiscal-impact statement imposes no burden or obligation upon the sponsor of a petition initiative. The fiscal-impact statement requirement is a content-neutral regulation that does not interfere with the sponsors' right to free speech. In sum, far from *interfering* with the constitutional right to amend the Florida Constitution by petition, the fiscal-impact statement actually *enhances the effective exercise of such right* by creating a more informed electorate.

II. THE VOTERS HAVE A RIGHT TO KNOW HOW MUCH AN AMENDMENT WILL COST.

A. The Real Parties In Interest.

> [T]he real parties in interest here, not in the legal sense but in realistic terms, are the *voters*. They are possessed of the ultimate interest and it is they whom we must give primary consideration. The contestants have direct interests certainly, but the office they seek is one of high public service and of utmost importance to the *people*, thus subordinating their

> interests to that of the *people*. Ours is a government of, by and for the *people*. Our federal and state constitutions guarantee the right of the *people* to take an active part in the process of that government, which for most of our citizens means participation via the election process. The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard.[5]

As it was in the 2000 election, the *real parties in interest* during any election are the voters. While Article XI, Section 3 provides the citizens with the right to propose a revision or amendment to Florida's Constitution, Article XI, Section 5 bestows the voters with the paramount right to either accept or reject any such proposal. "Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity."[28] The point is simple – sovereignty of the people is meaningless if voters' decisions are based upon half-truths and force, rather than reflection and choice. If the voters are prevented from casting a knowing and intelligent vote, their constitutional rights are cheapened, and the legal framework of our democracy is invalidated.

Therefore, Article VI, Section 1 imposes upon the Legislature the obligation to regulate elections, and thus ensure ballot integrity. In discharging its constitutional

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[28] *Armstrong v. Harris,* 773 So.2d 7, 12 (Fla. 2000).

duty with respect to the election process, the Legislature has passed legislation designed to help voters understand the amendments that are proposed.[29] Similarly, chapter 2002-390 helps to ensure ballot integrity by providing the voters with the information they need to make an informed and knowing decision.

B. Who's Picking Up the Tab?

When a proposed amendment carries a price tag that the *voters will have to bear*, ballot integrity and accuracy require disclosure of that amount. Florida's amendment to reduce class size exemplifies this point. The REC has estimated that the cumulative cost to implement this amendment through 2010 will range from $20 billion to $27.5 billion.[30] Once fully implemented, each year's operating costs are estimated to be $2.5 billion in today's dollars.[31] Currently, Florida's budget for the 2002–2003 fiscal year is $50.4 billion, with the state spending approximately $14 billion on K–12 education.[32] Consequently, the price tag for the amendment to reduce

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[29] *See* § 101.161, Fla. Stat. (2001).
[30] *Fiscal-impact Statements,* July 27, 2002 Revenue Estimating Conference. (App. B).
[31] *Id.*
[32] *Governor Bush Signs State Budget Providing Historic Commitments to Education, Elderly and Environment* (visited August 4, 2002) <**http://sun6.dms.state.fl.us/eog_new/eog/library/releases/2002/june/budget-06-05-02.html**>. (App. C).

class size constitutes approximately 5–7% of the entire state budget, and 17–24% of the current K-12 educational budget.

Given a voting public that has historically been adverse to new or higher taxes,[33] it is obvious that this amendment will require a significant overhaul of state appropriations among the various functions of our state, including not only education but also, among others, public health, safety and welfare; transportation; disaster relief; and agricultural and environmental regulation. While it is the Legislature's obligation to determine how funds will be appropriated, we must not lose sight of the fact that *it is the citizens' money that is being spent*.

The voters' right to choose such an amendment is undeniable. However, because they will be the ones picking up the tab, do they not also have the right to know the cost of the amendment *prior* to being asked to vote? The answer is obvious – in order for voters to be able to make an informed decision on whether to accept or

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[33] Florida TaxWatch has estimated that a one penny increase to the state's six cent sales tax would raise $2.9 billion annually, and a state personal income tax (currently prohibited by the Constitution) of one percent of Floridians' federal taxable income would raise approximately $2.4 billion annually. Under either scenario, this proposal could result in an average cost of $146 to $201 per Floridian annually. Florida Tax Watch, *The First Constitutional Amendment Estimating Conference Puts an Official Price Tag on Class Size Initiative* (visited July 31, 2002) <http://www.floridataxwatch.org/conamendcost.html>. (App. D).

reject a proposal, they must be advised of its cost. Few people would reject the keys to a new car if the price is right, but they may have second thoughts if the price will prevent them from being able to pay their rent.

Article XI provides the citizens of this state with an inimitable right to control the basic legal framework of their state. Floridians have the right to frame their constitution in any way they see fit, as long as they keep within the confines of the Federal Constitution.[34] It is for the citizens to decide what limitations on the power of government the constitution will provide, and how the constitution allocates governmental functions and powers among the various branches. However, Article XI does not stop there. Floridians have the right to establish public policy and programs through their constitution. Some of these proposals may have little or no determinable fiscal impact on the state budget. Conversely, some proposals may come at a great monetary cost. Because reality dictates that there are finite resources to fund these proposals, the citizens are entitled to know if the price is right so that they can balance competing needs with limited resources. To deny Florida citizens this information is to deny them their right to make an informed and knowing decision on

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[34] *Gray v. Golden*, 89 So.2d 785, 790 (Fla. 1956).

whether to accept or reject the proposal—thereby cheapening their constitutional rights.

C. The Fiscal-impact Statement Strengthens Ballot Integrity and the Constitutional Process.

Article XI, Section 3 "does not afford the same opportunity for public hearing and debate that accompanies the proposal and drafting processes of Sections 1, 2, and 4."[35] Chapter 2002-390 provides a logical and reasonable means for encouraging public discourse and debate regarding *any* proposed amendment, thus affording the voters the ability to cast an informed and knowing vote.

Pursuant to chapter 2002-390, fiscal-impact statements are required on *all* proposed amendments to the constitution, whether proposed pursuant to a joint legislative resolution, the constitutional revision commission, a citizen initiative, the constitutional convention, or the taxation and budget reform commission.[36] Thus, chapter 2002-390 ensures that voters will be informed of the fiscal impact, if any, for all proposed amendments to the constitution, regardless of their source. This requirement constitutes a legitimate regulation of the election process, and helps to

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[35] *Advisory Opinion to the Attorney General Re: Fish & Wildlife Conservation Commission,* 705 So.2d 1351, 1353 (Fla. 1998).
[36] Chapter 2002-390, § 4, Laws of Fla.

ensure the integrity of the ballot.

A fiscal-impact statement encourages public discourse on the merits of a proposal, and provides the electorate with the ability to conduct their own cost - benefit analysis. It also provides the voters with the information they need to participate in the decision-making process regarding the revenue generation/program reallocation that may be needed to pay for the proposal. Since the *voters will be the ones paying for the proposal*, they should be involved in the process of deciding whether the proposal will be funded through new taxes or program reallocation. By allowing the voters the power to approve the amendment with a better understanding of its financial ramifications, they are better able to send a clear mandate to the Legislature regarding the programs they want funded and how their tax dollars are allocated.

Moreover, if the Legislature knows that the electorate approved an amendment knowing its cost, it will be better equipped to fulfill the public's directive as they work to fund the amendment. Likewise, if the voters have an understanding of the financial ramifications of an amendment when they vote to approve it, they will have a greater appreciation for the decisions made by the Legislature to fund the amendment. In

sum, the fiscal-impact statement strengthens the constitutional process. Accordingly, the voters' right to amend the Constitution is strengthened, not weakened, by disclosure of the amendments fiscal impact *prior* to the vote.

D. Fiscal-Impact Statement Requirements In Other States.

While the constitutionality of a statutory fiscal impact requirement is an issue of first impression for this Court, a review of the fiscal impact requirements of other states is compelling. A 50-state search has revealed that there are 24 states that provide for constitutional or statutory amendments by citizen initiatives.[37] Of those states, 11 require that a fiscal impact analysis of the proposed constitutional or statutory amendment be published on a ballot, sample ballot, or voter information guide.[38] The fiscal impact requirement is provided by *statute* in ten of these states.[39]

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[37] Art. XI, § 1, Ak. Const.; art. IV, pt. 1, § 1(4), Ariz. Const.; amend 7, Ark. Const.; art. II, § 8, art. XVIII, § 3 Cal. Const.; art. V, § 1, Colo. Const.; art. XI, § 3, Fla. Const.; art. III, § 1, Idaho Const.; art. XIV, § 3, Ill. Const.; art. XLVIII, pt. 1, Mass. Const.; art. IV, pt. 3, § 18, art. IV, pt. 1, § 1, Me. Const.; art. II, § 9, art. XII, § 2, Mich. Const.; art. 15, § 273, Miss. Const.; art. III, § 49, Mo. Const.; art. III, § 4, art. XIV, § 9, Mont. Const.; art. III, § 2, Neb. Const.; art. III, § 1, N.D. Const.; art. 19, § 2, Nev. Const.; art. II, § 1A-B, Ohio Const.; art. V, § 1, Okla. Const.; art. XVII, § 1, art. IV, § 1, Or. Const.; art. III, § 1, art. XXIII, § 1, S.D. Const.; art. VI, § 1, Utah Const.; art. 2, § 1, Wash. Const.; art. 3, § 52, Wyo. Const.

[38] § 19-123(D), Ariz. Rev. Stat. (West 2002); § 9087, Cal. Elec. Code (2002); § 1-40-124.5, Co. Rev. Stat. (2002); art. 15, § 273, Miss. Const.; § 23-17-31, Miss. Code Ann. (2002); §§ 116.010, .175, Mo. Ann. Stat. (West 2002); § 13-27-312, Mont. Code

The constitutionality of the statutory fiscal impact requirement *has not been challenged in any of these states*. Moreover, in its bipartisan report entitled *Initiative and Referendum in the 21st Century,* the National Conference of State Legislatures has recommended that states having citizen initiatives should adopt a fiscal impact requirement.[40]

A "proposal of amendments to the Constitution is a highly important function of government, that should be performed with the greatest certainty, efficiency, care and deliberation."[41] The voters' right to accept or reject a proposed amendment to their constitution based upon informed and knowing reflection is of paramount importance. When a proposed amendment will have a determinable fiscal impact on the state, it is for the voters to decide whether the advantages outweigh the disadvantages.

Ann. (2002); §§ 293.250, .253, .565, Nev. Rev. Stat. Ann. (West 2002); § 250.125, Or. Rev. Stat. (2002); § 20A-7-701, Utah Code Ann. (2001); 2002 Wash. Legis. Serv. 139 (S.B. 6571) (West); § 22-24-105(c), Wyo. Stat. Ann. (2002).

[39] *Id.* The fiscal-impact statement requirement is provided by constitutional provision in Mississippi, and this requirement is codified by statute. *See* Art. 15, § 273, Miss. Const.; § 23-17-31, Miss. Code Ann. (2002).

[40] National Conference of State Legislatures, *Initiative and Referendum in the 21st Century,* pp. 27-30 (July 2002). (App. E).

[41] *Askew v. Firestone,* 421 So.2d 151, 155 (Fla. 1982), (quoting *Crawford v. Gilchrist,* 59 So. 963, 968 (Fla. 1912)).

III. THE APPLICATION OF CHAPTER 2002-390 TO INITIATIVES NOT YET CERTIFIED FOR PLACEMENT ON THE BALLOT COMPLIES WITH THE CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS, FREE SPEECH, AND EQUAL PROTECTION.

Chapter 2002-390 became law on May 24, 2002, and took effect as of that date.[6] Although it took effect immediately upon becoming law, initiative petitions that had been certified by the Secretary of State for placement on the ballot as of the effective date are expressly exempted from application of the law.[42] Similarly, constitutional amendments proposed by joint legislative resolutions that had been filed with the Secretary of State as of the effective date are also expressly exempted from the law.[43]

It is appropriate to exempt from application of chapter 2002-390 those constitutional amendment proposals that had completed *all* of the steps necessary for placement on the ballot as of the new law's effective date. An amendment proposal by initiative petition is placed on the ballot when its position is certified by the Secretary of State, which certification occurs when the supervisors of elections certify that the required number of signatures have been collected and certified.[44] A proposed

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[42] *Id. § 8.*
[43] *Id.*
[44] § 100.371(1),(2), Fla. Stat. (2001).

amendment by joint resolution is placed on the ballot when it is filed with the Secretary of State more then 90 days before the next general election.[45] Therefore, the Legislature believed it would be inappropriate to apply the fiscal-impact statement requirement to amendments proposed by either initiative petition or joint resolution that had satisfied these legal criteria prior to the effective date of the law. The sponsors of these amendment proposals that have been certified, whether initiated by the Legislature or petition initiative, at least arguably had a right to have the proposed amendment appear on the ballot in the form that had been certified or filed with the Secretary of State, i.e., *without* a fiscal-impact statement.[46]

Sponsors of amendment proposals which had *not* completed the legal criteria for placement on the ballot as of May 24, 2002, however, clearly did not hold any such right. At best, these sponsors held the right to place *their* proposed ballot summary language on the ballot—assuming the ballot summary language satisfied this Court's review and the sponsors timely obtained the requisite number of signatures.

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[45] Art. XI, § 5, Fla. Const.

[46] To the extent the Sponsors suggest that the Legislature chose May 24, 2002 as the effective date in order to exempt from the fiscal-impact statement requirement all of the amendments proposed by joint resolution, this suggestion is unfounded. The Legislature prepares a fiscal analysis and economic impact statement for all constitutional amendments proposed by joint resolution.

Chapter 2002-390 does not abrogate or interfere with this right in any way. Because chapter 2002-390 does not "attach new legal consequences to events completed before its enactment," it does not violate the Sponsors' due process rights.[47]

Nor does application of chapter 2002-390 to those initiatives not yet certified for placement on the ballot as of May 24, 2002, conflict with the requirement in the Florida Constitution that this Court review initiative petitions.[48] Chapter 2002-390 *provides for judicial review* of the fiscal-impact statement for those uncertified initiative petitions that had already undergone or were in the process of undergoing review in this Court for compliance with the single subject requirement and the accuracy requirement of Section 101.161. Section 3 of chapter 2002-390 creates Section 100.371(6)(b)1, Florida Statutes, which section provides in relevant part: "Any fiscal-impact statement that a court finds not to be in accordance with this

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[47] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999). The fact that chapter 2002-390 does not affect the sponsors' right to place their initiative petition on the ballot distinguishes this legislation from the legislation struck down in *Kean v. Clark*, 56 F. Supp. 2d 719 (S.D. Miss. 1999). The challenged legislation in *Kean* actually changed the requirements of the signature-gathering process *while the sponsors were in the process of gathering the required signatures*. In stark contrast to the legislation at issue in the present case, the legislation challenged in *Kean* clearly attached new legal consequences to events completed before its enactment.

[48] Article IV, § 10, Fla. Const.

section, s. 100.381, or s. 101.161 shall be remanded solely to the Revenue Estimating Conference for redrafting. The Revenue Estimating Conference shall redraft the fiscal-impact statement within 15 days."[49]

Thus, the sponsors of initiative petitions that were not yet certified as of May 24, 2002, could have brought a judicial challenge to the fiscal-impact statements that were prepared by the REC. No such judicial challenges were brought. The Sponsors cannot complain that their due process rights were violated when they failed to avail themselves of the very due process rights that were afforded to them by chapter 2002-390.[50]

Given the importance of informing voters about the fiscal impact of the proposed constitutional amendments that they are being asked to vote upon, it is in the best interest of the voters and the election process to provide this information for as many of the proposals on the November 2002 ballot as possible.[51] Thus, the

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[49] Ch. 2002-390, § 3, Laws of Florida.

[50] *See City of Miami v. St. Joe Paper Co.*, 364 So.2d 439, 444 (Fla. 1978) (due process claims based upon retroactive application of statute are obviated where statute gives owners of claims under old statute reasonable time to take steps to preserve their interests).

[51] It is appropriate to consider the public interest served by a statute in evaluating a due process challenge based upon retroactive application. *See Dept. of Agriculture and Consumer Servs. v. Bonanno*, 568 So.2d 24, 30 (Fla. 1990) (citing *State Dept. of*

Legislature sought to make 2002-390 effective as soon as legally permissible and to make it apply to as many amendment proposals in the 2002 election as legally permissible.[52]

Finally, the manner in which chapter 2002-390 is implemented violates neither the First Amendment nor the Equal Protection Clause. As discussed in Section I, *supra*, regardless of its implementation schedule, chapter 2002-390 is a content-neutral regulation that does not interfere with the Sponsors' right or ability to speak. There is no Equal Protection violation in the 2002 election because the implementation schedule categorizes amendment proposals in a non-discriminatory fashion. For purposes of implementing chapter 2002-390 in 2002, this law classifies

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Transp. v. Knowles, 402 So.2d 1155 (Fla. 1981)).

[52] The Sponsors contend that chapter 2002-390 was targeted at defeating their petition initiatives. In fact, the Legislature's first attempts to address fiscal impact requirements for proposed constitutional amendments began long before the Sponsors' petition initiatives existed. In February 2001, a proposal was introduced to amend the constitution to require the financial impact of an initiative proposal to be disclosed to the public *prior to* an election. *See* Fla. H.R. Jour. 02593 (Reg. Sess. 2001). This proposed amendment will be on the ballot in the 2002 election. Then in the 2002 Regular Session, a bill and constitutional amendment were proposed relating to fiscal-impact statements; both died in committee. *See* Fla. HB 909 (2002); Fla. HJR 1131 (2002). House Bill 65-E, which was the genesis of chapter 2002-390, was introduced during a special session on May 1, 2002. This history demonstrates that the Legislature is committed to providing the voters with the information necessary to make an informed vote, not defeating any particular amendment proposal.

amendment proposals according to their status in the ballot approval process as of the effective date—*not* according to whether they were proposed by citizens or the Legislature.[53] Thus, there is no violation of the Equal Protection Clause because there is a rational basis for applying chapter 2002-390 to amendment proposals that had not yet satisfied the legal requirements for placement on the ballot.[54]

Chapter 2002-390 appropriately exempts in the 2002 election those proposed amendments to the Florida Constitution that had satisfied all of the legal requirements for placement on the ballot prior to the law's effective date. Because chapter 2002-390 does not interfere with the ballot summary language prepared by the petition sponsor, application of chapter 2002-390 to those initiative petitions that had not been certified by the Secretary of State as of that date does not interfere with any Due Process, First

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[53] The even-handed nature of this schedule is demonstrated by the fact that chapter 2002-390 does not apply to one petition initiative that had been certified by the Secretary of State as of May 24, 2002. *See Constitutional Amendment No. 6*, entitled "Protect People from the Health Hazards of Second-Hand Tobacco Smoke by Prohibiting Workplace Smoking" (certified for ballot placement on May 10, 2002). (App. F).

[54] *See, e.g., Pennell v. City of San Jose*, 485 U.S. 1, 14, 108 S. Ct. 849, 859 (1988) ("We will not overturn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.") (quoting *New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 2517 (1979)).

Amendment, or Equal Protection rights held by the sponsors of those initiative petitions.

CONCLUSION

Wherefore, the Florida House, as amicus curiae, respectfully requests that this Court find that chapter 2002-390 does not violate any provision of the Florida or Federal Constitutions, vacate the trial court's order enjoining the Petitioners from placing a fiscal-impact statement on the ballot in the 2002 election, and grant such other relief as the Court deems appropriate to ensure that the legislation will have its intended effect of informing the voters of the fiscal impact of the constitutional amendments subject to chapter 2002-390.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of August, 2002 to Deborah K. Kearney, Esquire, General Counsel, Florida Department of State, PL 02, The Capitol, Tallahassee, Florida 32399-0250, Attorneys for Petitioners; to Mark Herron, Esquire, Messer, Caparello & Self, P. A., 215 South Monroe Street, Suite 701, Tallahassee, Florida 32301, Attorneys for Respondents; and to Charles T. Canady, Esquire, General Counsel, and Simone Marstiller, Esquire, Assistant General Counsel, Executive Office of the Governor, Room 209, The Capitol, Tallahassee, FL 32399-9810, Attorneys for Amicus Curiae Governor Jeb Bush.

_____
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Fla. R. App. P. 9.210(a)(2) and is in the font of Times New Roman 14 point.

_____
Attorney

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[1] *Harris, et al. v. Coalition to Reduce Class Size, et al.*, 27 Fla. Law Weekly D1685 (July 26, 2002).

[2] Ch. 2002-390, Laws of Florida (effective May 24, 2002), included in the Appendix to this brief at Tab A. Future references to the Appendix will be referred to as (App. __).

[3] *Askew v. Firestone,* 421 So.2d 151, 156 (Fla. 1982) (Boyd, J., specially concurring).
[4] *Krivanek v. Take Back Tampa Political Committee,* 625 So.2d 840, 843 (Fla. 1993)*; cert. denied*, 511 U.S. 1030, 114 S.Ct. 1538 (1994); *see also State ex rel. Citizens Proposition for Tax Relief v. Firestone,* 386 So.2d 561, 566-67 (Fla. 1980) (". . . [T]he legislature, in its legislative capacity, and the secretary of state, in his executive capacity, have the duty and obligation to ensure ballot integrity and a valid election process. Ballot integrity is necessary to ensure the effectiveness of the constitutionally provided initiative process.").
[5] *Gore v. Harris,* 772 So.2d 1243, 1254 (Fla. 2000), (quoting *Boardman v. Esteva*, 323 So.2d 259, 263 (Fla. 1975) (emphasis supplied)); *cert. granted*, 531 U.S. 1046, 121 S.Ct. 512 (2000), *rev'd* 531 U.S. 98, 121 S.Ct. 525 (2000).
[6] *Id.* § 9.